

VOLUME 2. AIR OPERATOR CERTIFICATION

CHAPTER 3. SELECTED PRACTICES

SECTION 1. AIR CARRIER MERGERS AND ACQUISITION OF AIR CARRIER OPERATIONAL ASSETS

149. GENERAL. The number of new airlines starting operations since the Airline Deregulation Act (1978) has increased significantly. As deregulation took effect (circa 1983 and 1984), changing markets and intense competition caused an increasing number of air carrier mergers and sales of air carrier operational assets. This section provides direction and guidance and a process to follow when air carriers merge operations, acquire operational assets of another air carrier, or change ownership. These actions generally result in operational changes requiring various levels of FAA coordination and approval or acceptance of the changes before they can be implemented. For mergers and situations involving the acquisition of operational assets of another air carrier (acquisitions), the types of changes are normally characterized by the following:

- Changes in operational control systems and philosophy
- Changes in programs or subsystems which are part of the operational control system
- Revisions to manuals containing procedures for conducting various operations, maintenance, and inspection programs
- Revisions to training curricula and/or changes in employee qualification criteria for persons who will be conducting merged or new operations and/or programs

A. Mergers and Acquisitions. These situations have a significant affect on FAA resources and it is imperative that they be handled efficiently and in a manner that ensures continued compliance with Title 14 of the Code of Federal Regulations (14 CFR) and safe operating practices. The FAA's ability to effectively fulfill its responsibility concerning mergers or acquisitions is directly influenced by the following factors:

- Complexity of the affected operations
- An air carrier's timely notification of the FAA
- The FAA's early understanding of the changes which will result from the merger or acquisition
- The certificate holder's comprehension of the actions which must be taken to obtain FAA approval or acceptance of the consequent changes

- The length of time available and sequence in which changes are to be implemented

B. Notification. 14 CFR does not specifically require certificate holders to notify the FAA of impending mergers or acquisitions. The last step to many changes resulting from mergers or acquisitions is approval and issuance of operations specifications. Early notification enables the FAA to make contingency plans and be prepared to respond in a timely manner. This benefits the affected air carriers and the FAA.

C. Transition Plans. Situations involving mergers or acquisitions usually change the capability and character of the affected certificate holders. A transition period often follows when the original capabilities of the affected certificate holder will be in a state of change until new (different) capabilities have been established and stabilized. Regardless of the extent of change, the FAA has continuing responsibility for overseeing the certificate holder's operation. These responsibilities can be more effectively managed if the FAA is fully aware of the certificate holder's intentions during the transition period. 14 CFR does not require certificate holders to develop and provide a plan to the FAA. However, in most situations, changes to parts of an operation such as operations specifications, training programs, maintenance programs, manuals, checklists, MELs, record-keeping, or flight control will require FAA approval or acceptance. The controlling (surviving) certificate holder's management personnel must be made aware that a transition plan outlining changes which require FAA approval or acceptance is necessary if the certificate holder's schedules for obtaining appropriate approvals or acceptance are to be met. Until the controlling certificate holder makes these changes and obtains these approvals, it must continue to operate in accordance with current approvals. Continued safe operations can only be assured when conducted in accordance with a transition plan providing for orderly and realistic accommodation of the changes to be made. Transition plans for conducting operations during mergers or acquisitions should include the following:

- An outline of changes to be made during the transition period which will require FAA approval or acceptance

- The controlling certificate holder's best estimate of when it will implement changes (These estimates should be incorporated into the transition plan. However, the FAA may give the controlling certificate holder an Air Carrier Certification Schedule of Events (see volume 2, chapter 1, section 1, Figure 2.1.1.1) to use to record estimates of when these changes will be made.)
- A description of the interim methods and/or procedures which will be used during the transition period to ensure compliance with 14 CFR and safe operating practices until all changes are fully implemented

D. Mergers. When two or more certificate holders merge operations there will be significant and often complex changes to the capabilities and characteristics of one or more of the merging parties. Usually, all of the merging parties' operations are changed to some extent. The transition plan should address the manner in which, and when, such items as certificates, operations specifications, manuals, training programs, maintenance programs, and recordkeeping procedures will be merged. This plan should indicate a completion of all the merged items, so that at the end of the transition period the controlling certificate holder's operation reflects only one operation.

E. Acquisitions. There are three types of acquisition:

(1) Acquisitions by holding companies (non-certificate holders), when the certificate holder continues to exist as an independent entity (subsidiary), is a type of acquisition which requires little, if any, FAA action. Usually, few operational changes are made and development of a transition plan is not necessary.

(2) Acquisitions that change personal or corporate ownership, but do not change the capability or characteristics of the operation and do not make extensive changes in management personnel required by 14 CFR, generally require a minimum of FAA action. The affected certificate, operations specifications, and manuals will need to be amended to show the new name of the certificate holder. A transition plan may not be necessary.

(3) Acquisitions that involve the transfer of significant amounts of operational assets, including equipment and/or personnel, are similar to mergers. A transition plan must be developed in much the same way as a transition plan is developed for a merger.

151. THE PROCESS FOR HANDLING MERGERS AND ACQUISITIONS.

The process for handling mergers or acquisitions follows the General Approval/Acceptance Process described in volume 1, chapter 4, section 6. The general principles and terms used in the generic process are applicable to the process described in the following paragraphs. For this discussion, "controlling certificate holder" identifies key management personnel of the organization

that will hold the certificate that authorizes operations after a merger or acquisition.

153. PHASE ONE.

A. Air carriers involved in a merger or acquisition should, on their own initiative, notify appropriate Certificate Holding District Offices (CHDO) of impending mergers or acquisitions. Affected CHDOs, however, may first learn of these impending actions through news media or other means. Within five (5) working days of becoming aware of an impending acquisition or merger, principal inspectors shall contact their certificate holders to offer assistance in assuring continued regulatory compliance during any change. Although it may involve sensitive issues, the intent of this early contact is to establish a good working relationship that will help the air carrier ensure that aviation safety is not compromised during transition. Regardless of the means of notification, the affected CHDOs and their Regional Flight Standards Divisions (RFSD) must, as early as possible, make the following initial determinations:

(1) They must determine who the controlling certificate holder will be and where the principal base of operations will be located. These issues are normally resolved by the affected air carriers in the early discussion stages of a merger or acquisition. The affected CHDOs should discuss these issues with their respective certificate holder's management as early as possible.

(2) Affected CHDOs and assigned principal inspectors must establish lines of communication. Once established, this communication should be maintained throughout the transition period to provide an ongoing dialogue between assigned principal inspectors, district offices, and the regions. The regions shall keep AFS-200 and AFS-300 informed of the status of mergers or acquisitions. Affected CHDOs (when more than one office is involved) should fully coordinate their findings and use the results of these discussions as the basis for determining who the controlling certificate holder will be and where the principal base of operations will be located.

(3) The RFSD must decide which district office will be the CHDO after the merger or acquisition. In making this determination, the considerations described in Order 8400.10, volume 2, chapter 1, section 3 for assigning CHDO responsibilities must be applied. If the RFSD transfers CHDO responsibilities, the CHDOs should accomplish the same types of inter-district office and inter-regional coordination, briefings, inspections, and transfer of operator files, as described in volume 2, chapter 1, section 3.

B. The assigned CHDO must schedule a meeting to brief the controlling certificate holder's key management personnel of FAA requirements. The CHDO manager should ensure that the timing of this meeting is appropriate for the situation. When possible, the meeting should be scheduled before a merger or acquisition is formalized so

that contingency planning can be initiated by the operator and the FAA. In other situations it may not be possible or appropriate to schedule the meeting until after the merger or acquisition has been formalized. Assigned principal inspectors should prepare for and conduct the briefing. The certification job aids and the schedule of events may be useful in preparing for this briefing.

(1) The first item for discussion at the initial meeting should be verification of information provided to the CHDO when notified of the impending merger or acquisition. Principal inspectors should identify any changes to the information previously provided. If the controlling certificate holder has changed its initial planning information to the extent that determination concerning CHDO assignment is questionable, the RFSD must be promptly advised.

(2) The CHDO shall inform the controlling certificate holder that it must develop a transition plan outlining proposed changes with estimates of when the changes will occur. The controlling certificate holder should submit this transition plan to the CHDO. The principal inspectors must brief the controlling certificate holder that the purpose of the plan is to:

- Provide an orderly approach during the transition period for making changes necessitated by the merger or acquisition.
- Provide a common basis of understanding between the certificate holder and the FAA of the changes to be made and when and how they will be made.
- Permit the FAA to coordinate its activities with the certificate holder's activities so that the FAA can efficiently and promptly respond to requests for approval or acceptance of changes.
- Ensure continued compliance with regulatory requirements and safe operating practices during the transition.

(3) During the initial meeting, the controlling certificate holder must understand the kinds of information that should be included in the transition plan. The kind of information to be outlined is dependent on the type and complexity of the situation. Principal inspectors should request only information that they believe necessary for the situation. Figure 2.3.1.1 provides a Transition Plan Job Aid for inspector use. The following list gives examples of the kinds of information that should be addressed when appropriate to the situation. PIs should request any other kinds of information not included in the following list if, in their judgment, it is necessary.

- The interim methods the air carrier will use:
 - to train crewmembers, dispatchers/flight followers, and ground personnel
 - to keep these personnel current and qualified
- Air carrier's plan to change the training or integrate training programs
- Air carrier procedures for scheduling crewmembers and ground personnel into changed or integrated training programs
- The maintenance programs and weight and balance programs the air carrier will use, and any interim procedures associated with these programs
- The air carrier's plan to change or integrate maintenance and weight and balance programs
- Any interim recordkeeping methods and/or procedures the air carrier will use, to include:
 - training and qualification records
 - flight time, duty period, and rest records
 - trip records
 - maintenance records
- The air carrier's plan to change and/or integrate recordkeeping methods and procedures
- An air carrier's interim procedures for using general operations and maintenance manuals, checklists, MELs/CDLs, airport analysis, emergency manuals and any other company manuals including planned changes and/or integration of these documents, methods which will be used to introduce crewmembers and ground personnel to changes in these documents, and any training to be given on these changed documents
- An air carrier should request an amendment to its operations specifications. Amendment requests should include any planned changes in authorizations, limitations, management personnel, and other areas affected by the merger as necessary. The air carrier must provide a schedule of the proposed changes in order to facilitate issuance of amended operations specifications.
- An air carrier's interim methods and/or procedures for operational control including dispatch/flight release, weather and airport data, maintenance control, and control of contractual support
- An air carrier's plan to change the systems, methods, and procedures used for operational control

- Any other changes the air carrier plans to make to the kinds of operations and areas of en route operations, including planned reductions, consolidations, expansions, and/or relocations of operations, equipment, and/or facilities

C. Principal inspectors shall encourage the controlling certificate holder to consult with and solicit advice from principal inspectors during development of the transition plan. In certain situations the controlling certificate holder may be reluctant to develop a transition plan for submission to the FAA. This reluctance could be based on concerns about the time and resources required to develop a plan, or whether the FAA will hold the operator to its proposals and schedules in an inflexible manner. In these situations, the controlling certificate holder shall be advised that without a transition plan the FAA will be unable to assign a priority to FAA attention on requests for approvals of changed programs or amendments to operations specifications. The controlling certificate holder should also be advised that the FAA recognizes modifications to the transition plan and estimated schedules will often be necessary and, with appropriate notification of these changes, the FAA will respond in a timely manner.

D. Principal inspectors should encourage the controlling certificate holder to submit the transition plan to the CHDO as soon as possible so that the FAA may expeditiously begin planning its activities.

E. If the controlling certificate holder refuses to submit a transition plan, the CHDO must implement a program of increased surveillance. Without a transition plan, continued compliance with regulatory requirements and safe operating practices can only be assured through increased surveillance. This increased surveillance must cover all aspects of the controlling certificate holder operation and the operations of other parties involved in the merger or acquisition. If the increased surveillance indicates any trends of noncompliance, principal inspectors must request or conduct appropriate in-depth inspections as necessary to assure safe operations.

155. PHASE TWO.

A. Phase two begins when the controlling certificate holder submits the transition plan. Principal inspectors must review the plan in detail during this phase. Principal inspectors should carefully consider the feasibility of the plan with respect to:

- Logical sequence of events and activities
- Continued compliance with 14 CFR and safe operating practices
- Completeness of events or activities
- Inspector and other FAA resource availability

(1) *Logical Sequence of Events and Activities.* Many events and activities outlined in the plan must occur before other events or activities. For example, if the controlling certificate holder plans on mixing flightcrews previously from different air carriers, certain training should be completed before mixing crews.

(2) *Continued Compliance with 14 CFR and Safe Operating Practices.* The plan should outline methods or procedures to be used to ensure continued compliance with 14 CFR and safe operating practices. For example, previously approved MELs based on specified maintenance support procedures should continue to be used with the same specified maintenance procedures until the MEL is changed and approved. Another example would be a need for the separate airlines involved to keep separate record-keeping systems and procedures until new methods and procedures are established and activated.

(3) *Completeness of Events or Activities.* The plan must indicate how and when an event or activity will be completed. For example, if the plan indicates that manuals will be changed, it must show that completed changes will be made to include removal of outdated material and erroneous references to non-surviving entities or activities. It should indicate the date for completion of these types of events or activities. The transition plan should not outline “open-ended” events or activities. It should indicate a completion of the transition period or when all changes resulting from the merger or acquisition are scheduled to be completed.

(4) *Inspector and Other FAA Resource Availability.* During review of the transition plan, principal inspectors should determine the availability and capability of inspector resources and develop plans and schedules accordingly. To be responsive to the controlling certificate holder’s needs, principal inspectors will need to conduct timely evaluations of the changes outlined in the transition plan.

B. Principal inspectors must determine whether the transition plan represents a feasible proposal. If significant deficiencies, omissions, or impractical proposals exist, the principal inspectors should meet with the controlling certificate holder’s management and attempt to resolve these problem areas. If these problem areas cannot be resolved to the satisfaction of the principal inspectors, the plan must be returned to the controlling certificate holder with a letter briefly describing the unsatisfactory areas. The letter should also explain that the FAA cannot accept the plan since it does not ensure continued compliance with 14 CFR and safe operating practices. A copy of this letter and the transition plan must be retained by the CHDO.

NOTE: When a transition plan is returned because it does not ensure continued compliance, or when controlling certificate holders refuse to develop and submit a plan, the CHDO must initiate increased surveillance of all operations conducted

by the controlling certificate holder. The principal inspectors should consider requesting an in-depth inspection of that certificate holder (appropriately timed for the situation).

C. If the transition plan is acceptable, principal inspectors should inform the controlling certificate holder of its acceptance, either verbally or by letter. Acceptance of the plan represents a commitment by the principal inspectors to make reasonable efforts to accommodate the controlling certificate holder's planned changes in a timely and responsive manner.

D. When principal inspectors accept a part 121 or part 135 air carrier's transition plan, principal inspectors will issue OpSpec A502, Air Carrier Merger and/or Acquisition. See volume 3, chapter 1, section 3, OpSpec A502 for guidance about issuing OpSpec A502.

E. The CHDO shall then forward a copy of the transition plan to AFS-200 and/or AFS-300, as appropriate, through their RFSD. When the direction and guidance provided in this order does not adequately address a situation, the CHDO manager shall forward a request for additional guidance through his RFSD to AFS-1.

157. PHASES THREE, FOUR, AND FIVE. As the certificate holder initiates changes in accordance with the transition plan, principal inspectors must conduct evaluations of those changes in the same manner as other phase three evaluations of changes to a normal operation. If phase

four demonstrations and inspections are required, they will be planned for and conducted in the same manner as normal operations. Procedures for approval or denial of the changes outlined in the transition plan are the same as other phase five approvals or denials. Principal inspectors must closely monitor the progress of actual events or activities presented in the plan. If the sequence of events or activities is advanced or delayed, principal inspectors must consider the effect on other events or activities.

159. INDEPTH INSPECTION CONSIDERATIONS. In complex mergers or acquisitions, when extensive changes or integrations occur, principal inspectors should consider requesting an in-depth inspection of the controlling certificate holder's operation. This in-depth inspection should normally be planned towards the end, or after completion, of the transition period. The results of an in-depth inspection should indicate how effectively the transition plan was accomplished. It should also reveal any problem areas needing further attention.

NOTE: Regardless of the complexity of the situation, at any time during the transition period, when continued compliance with 14 CFR or safe operating practices becomes questionable, the CHDO should conduct an in-depth inspection without delay.

160. - 164. RESERVED.

FIGURE 2.3.1.1 MERGER AND ACQUISITION TRANSITION PLAN JOB AID

The following list illustrates the types of items principal inspectors should encourage the operator to include in a transition plan. Due to the variable nature of each merger or acquisition, the list is not an all-inclusive or mandatory list of items. It is designed solely to remind principal inspectors of the need to schedule work activities in a logical and timely manner.

PTRS CODE	NAME OF CERTIFICATE HOLDER:	APPLICABLE ITEM (Y/N)	DATE RECEIVED	DATE COMPLETED
	PHASE ONE			
	A.INITIAL FAA NOTIFICATION			
	B.INITIAL MEETINGS WITH CARRIER			
	C.INITIAL FAA MEETINGS AND CHDO DETERMINATIONS			
	PHASE TWO			
	A.TRANSITION PLAN SUBMITTED AND REVIEWED FOR COMPLETENESS AND ACCEPTABILITY			
	PHASES THREE AND FOUR			
	EVALUATION OF PLANNED ITEMS			
	A.TRAINING PROGRAMS (CATEGORIES OF TRAINING) FOR CREWMEMBERS AND DISPATCHERS			
	1.INITIAL NEW HIRE TRAINING FOR NEWLY HIRED PERSONNEL			
	2.INITIAL EQUIPMENT TRAINING			
	3.TRANSITION TRAINING			
	4.UPGRADE TRAINING			
	5.RECURRENT TRAINING			
	6.REQUALIFICATION TRAINING			
	7.CHECK AIRMEN TRAINING			
	8.SECURITY TRAINING			
	9.HAZARDOUS MATERIALS TRAINING			
	B.TRAINING PROGRAMS FOR MAINTENANCE PERSONNEL			
	1.MECHANIC/REPAIRMAN			
	2.INSPECTION PERSONNEL/RII			
	3.GROUND HANDLING/SERVICING			
	4.STATION PERSONNEL			
NOTE: FOR MERGERS AND ACQUISITIONS, ALL CREWMEMBERS & DISPATCHERS REQUIRE INITIAL NEW-HIRE TRAINING WITH THE NEW CERTIFICATE HOLDER BEFORE ASSIGNMENT TO A DUTY POSITION. MAINTENANCE, RAMP, OPERATIONS, AND STATION PERSONNEL MAY REQUIRE TRAINING.				
REMARKS				

FIGURE 2.3.1.1 (Cont'd.)
MERGER AND ACQUISITION TRANSITION PLAN JOB AID

PTRS CODE	NAME OF CERTIFICATE HOLDER:	APPLICABLE ITEM (Y/N)	DATE RECEIVED	DATE COMPLETED
	C.EVALUATE APPLICABLE MANUALS			
	1.COMPLETED GENERAL OPERATIONS MANUAL			
	2.COMPLETED GENERAL MAINTENANCE MANUAL			
	3.FAA-APPROVED AIRPLANE FLIGHT MANUAL			
	4.COMPANY AIRCRAFT OPERATIONS MANUAL			
	5.AIRCRAFT CHECKLISTS			
	a.Normal			
	b.Abnormal			
	c.Emergency			
	6.FLIGHT ATTENDANT MANUAL			
	7.DISPATCHER/FLIGHT FOLLOWING/LOCATING			
	8.STATION OPERATIONS MANUAL			
	9.COMPANY EMERGENCY MANUAL			
	10.AIRPORT DATA AND ENROUTE MANUAL (Charts and Plates)			
	11.AIRPORT/RUNWAY ANALYSIS (Performance)			
	12.MINIMUM EQUIPMENT LIST			
	13.CONFIGURATION DEVIATION LIST			
	14.MAINTENANCE TECHNICAL MANUALS:			
	a.Airframe/Powerplant			
	b.Structural Repair			
	c.Parts Catalogue			
	d.Inspection Procedures			
	e.Manufacturer's or Vendor's Manual			
	f.Wiring Manual			
	g.Overhaul Manual			
	15.FUELING/REFUELING/DEFUELING/DEICING			
	16.WEIGHT AND BALANCE CONTROL PROCEDURES			
	17.HAZARDOUS MATERIALS PROGRAM			
	18.SECURITY PROGRAM			
	19.RELIABILITY PROGRAM			
	20.CONTINUOUS AIRWORTHINESS MAINT. PROG.			
	21.EMERGENCY PLAN/NOTIFICATION			
	22.PASSENGER BRIEFING CARDS			
REMARKS:				

**FIGURE 2.3.1.1 (Cont'd.)
MERGER OR ACQUISITION TRANSITION PLAN JOB AID**

PTRS CODE	NAME OF CERTIFICATE HOLDER:	APPLICABLE ITEM (Y/N)	DATE RECEIVED	DATE COMPLETED
	D.CONTRACTS/LEASES/AGREEMENTS			
	1.TRAINING CONTRACTS			
	2.MAINTENANCE CONTRACTS/AGREEMENTS			
	3.AIRCRAFT LEASES			
	4.WEATHER/COMMUNICATION CONTRACTS			
	5.AIRPORT ANALYSIS CONTRACTS			
	6.EXCLUSIVE-USE AGREEMENTS			
	E.OTHER DOCUMENTS/PROGRAMS			
	1.AIRCRAFT CONFORMITY INSPECTION			
	2.MAIN OPERATIONS BASE			
	3.MAIN MAINTENANCE BASE			
	4.LINE/STATION FACILITIES			
	5.DISPATCH/FLIGHT FOLLOWING/LOCATING FAC.			
	6.RECORDKEEPING SYSTEMS:			
	a.Crewmember:			
	(1)Training			
	(2)Flight Time, Duty Periods, and Rest			
	(3)Qualification			
	b.Maintenance:			
	(1)Aircraft Records			
	(2)Personnel Training			
	c.Flight/Trip Records			
	7.EMERGENCY EVACUATION DEMONSTRATION PLAN			
	8.PROVING TEST PLAN			
	9.OPERATIONS SPECIFICATION			
	10.MANAGEMENT PERSONNEL			
	11.EXEMPTIONS, DEVIATIONS, WAIVERS, AUTHORIZATIONS			
	PHASE FIVE			
	A.AMEND OPSPECS AS APPROPRIATE			
	B.CERTIFICATE ACTION (AMEND/SURRENDER)			
	C.DETERMINE TRANSITION ACTIONS ARE COMPLETED			
	D.DEVELOP SURVEILLANCE PROGRAM			
	1.WITHIN GEOGRAPHICAL AREA			
	2.OUTSIDE GEOGRAPHICAL AREA			
REMARKS:				

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